ANZPAA
Australia New Zealand
Policing Advisory Agency

ANZPAA GUIDE FOR

# Managing Work Health and Safety in Australian and New Zealand Operational Policing

2022 | Final

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# Caveat

Regardless of the jurisdiction, the information in this Guide is designed to help police understand and meet their work health and safety duties in line with the applicable work health and safety legislation implemented in each Australian jurisdiction and New Zealand.

To illustrate the key principles, this Guide refers to the model Laws where applicable, along with other relevant laws such as those relating to workplace manslaughter. It is important for jurisdictions to note, that this Guide does not replace or override and is not to be relied upon to the extent it is inconsistent with:

- any laws, including work health and safety laws, that are enacted, or operate, or have effect, in the relevant Australian jurisdictions, the Commonwealth or New Zealand
- approved codes of practice in operation in the relevant Australian jurisdictions, the Commonwealth or New Zealand or
- guidance produced by the relevant police jurisdiction, including governance documents, policies, procedures, rules, general orders, documentation and/or practices.

The words **'must'**, **'requires'**, or **'mandatory'** indicate that a requirement exists under the applicable jurisdictional legislation. Compliance with these requirements should be considered subject to the WHS Laws enacted in individual jurisdictions. Where the word **'should'** is used in this Guide, it is intended to indicate a preferred course of action based on agreed good practice. Where a list is used, the word **'and'** is implied, unless expressly stated otherwise.

## Who will find this Guide useful?

- Police officers and others in policing undertaking operational activities
- Police organisations and police executives
- Health and Safety Representatives (HSRs)
- work health and safety regulators
- work health and safety professionals
- Work Health and Safety committees (HSC committees)
- Other committees, forums working groups
- Industry stakeholders

# Background

In 2009, the Workplace Relations Ministers' Council (WRMC) agreed to a framework (the Australian Harmonisation framework) for uniform occupational health and safety laws across Australian jurisdictions. In 2011, a single set of WHS laws were developed by Safe Work Australia. These are known as the 'model laws'.

The Commonwealth, Australian Capital Territory, New South Wales, Northern Territory and Queensland implemented the model WHS laws in their jurisdictions on 1 January 2012, while South Australia and Tasmania implemented WHS laws on 1 January 2013. At the time of review, Western Australia had passed the *Work Health and Safety Act 2020*. To date, Victoria retains its current work health and safety laws that are not based on but are broadly consistent with the model WHS Laws.

In New Zealand, the *Health and Safety at Work Act* (*HSWA Act*) came into effect in April 2016. The *HSWA Act* was introduced as part of HSW reforms which aimed to ensure New Zealand's safety system is 'fit for purpose'. The legislation sets out safety obligations and responsibilities for workplaces including policing. The revised Act is largely an adoption of the Australian Harmonisation framework with similar principles reflected throughout both sets of laws.

A complete list of the current work health and safety regulators in each jurisdiction is outlined in **Appendix A.**

### Codes of Practice

Codes of Practice dealing with specific hazards may also apply to police workplaces. Please refer to your jurisdiction's work health and safety regulator's website for a complete list of codes of practice that may apply to you (see **Appendix A** for your regulator's information).

# Preface

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The *ANZPAA Guide for Managing Work Health and Safety in Australian and New Zealand Operational Policing* (the Guide) was first developed in 2014 to provide a contextual and practical understanding of work health and safety legislation as it relates to police. It aims to provide police jurisdictions and their officers with an understanding of the responsibilities of duty holders under the applicable law and what those duties involve. It is intended to foster cross-jurisdictional awareness of strategies for managing risk which are unique to the work demands and operational environment of police.

This Guide recognises that police do not undertake their duties in a controlled environment and work health and safety risks in a policing context can be unpredictable. Consequently, work health and safety practices must be dynamic and highly responsive to the environment, often requiring consideration of a wide variety of complex hazards in any given moment to ensure police safety.

The review of this Guide reflects the ongoing commitment of Police Commissioners across Australia and New Zealand to the safety of their staff. The content has been updated to reflect contemporary work health and safety challenges faced by police and provides guidance on the implementation of effective risk management strategies.

It is important to note that this Guide acknowledges the work of individual jurisdictions in promoting and maintaining work health and safety. It is not intended as a replacement for existing jurisdictional policies and procedures but rather as a guide, reference and/or source document.

I would like to thank the nominated representatives who assisted ANZPAA in the review process. Their contributions ensure that the revised Guide meets the health and safety requirements of police in an increasingly complex world.

# Introduction

**This Guide is based on applicable work health and safety legislation implemented by jurisdictions. This Guide intends to provide practical information to support duty holders in Australia's Commonwealth, State and Territory and New Zealand's police organisations in fulfilling their responsibilities under the applicable work health and safety legislation.**

Any compliance requirements should be considered in the context of jurisdictional work health and safety (WHS) legislation. The Guide aims to provide police organisations and police officers an understanding of what the duties involve and how risks can be managed in their unique working environment.

This Guide particularly relates to police[1] undertaking operational activities, for example: general duties, search and rescue, dog handling, water police, protection, mounted police, aviation, special operations, forensics, fraud, drugs. In the Commonwealth jurisdiction, it relates to specific activities of peace keeping, international law enforcement capability development, counter terrorism, human trafficking, sexual servitude, and other transnational and international crime.

The Guide recognises challenges faced by police operating in a work environment that can be located anywhere and often involves multiple, complex hazards and risks associated with the unique circumstances and environments in which police undertake their duties.

Footnotes

[1] Police includes but is not limited to protective service officers, special constables, and police axillary officers.

# Glossary

It is acknowledged that jurisdictions may have key terms that relate specifically to certain legislation or their operating environment. The following key terms are provided for the purposes of contextualising terms utilised in this Guide.

| Key Term | | Additional resources |
|---|---|---|
| **Model WHS Act** | Refers to the Australian model Work Health and Safety legislation. | https://www.safeworkaustralia.gov.au/doc/model-work-health-and-safety-act |
| **Model WHS Regulations** | Refers to the Australian model Work Health and Safety Regulations. | https://www.safeworkaustralia.gov.au/doc/model-whs-regulations |
| **Model WHS Laws** | Collectively refers to the Australian model WHS Act, model WHS Regulations and the model Codes of Practice. | https://www.safeworkaustralia.gov.au/law-and-regulation |
| ***Health and Safety at Work Act 2015*** **(New Zealand)** | Refers to New Zealand's workplace health and safety law. | https://www.worksafe.govt.nz/laws-and-regulations/acts/hswa/ |
| **Duty Holder** | Each person who owes a duty under the Australian and New Zealand WHS legislation is referred to as a duty holder. | |
| **PCBU** | A 'person conducting a business or undertaking' or a PCBU is the main duty holder under Australian and New Zealand WHS legislation.<br>They are usually the employer and may be an individual person, a partnership, company, unincorporated body or association, a sole trader, a government department, or a statutory authority.<br>Police organisations throughout Australia and New Zealand are structured differently. They have different legal frameworks and ranking systems. It is beyond the scope of this Guide to state who the PCBU is in each jurisdiction. For the purposes of this Guide, the PCBU for any police organisation is referred to as 'the police PCBU'. | **Safe Work Australia**<br>https://www.safeworkaustralia.gov.au/resources-and-publications/guidance-materials/what-person-conducting-business-or-undertaking<br>**Work Safe New Zealand**<br>https://www.worksafe.govt.nz/managing-health-and-safety/getting-started/understanding-the-law/primary-duty-of-care/who-or-what-is-a-pcbu/ |
| **Officer** | An 'officer' includes a person who makes or participates in making, decisions that affect the whole, or a substantial part of the organisation. They strongly influence the culture of the business or undertaking and accountability within it. They make important decisions on the resources that will be made available for the purposes of work health and safety and the | **Safe Work Australia**<br>https://www.safeworkaustralia.gov.au/resources-and-publications/guidance-materials/health-and-safety-duty-officer |

| | | |
|---|---|---|
| | policies that will be developed to support compliance.<br><br>In Australian jurisdictions, an officer can be an officer of the Crown or a public authority. In New Zealand, only members of the Executive Leadership Team constitute an 'officer'.<br><br>It should be noted that it does not mean someone who is called an officer because of their rank or title, such as a police officer. | **Work Safe New Zealand**<br><br>https://www.worksafe.govt.nz/managing-health-and-safety/getting-started/mythbusting-and-faqs/officer-faqs |
| **Worker** | A 'worker' means anyone who carries out any work in any capacity for the PCBU.<br><br>A worker may be an employee, a work experience student, a volunteer, an apprentice, a trainee, a contractor, a subcontractor, or an employee of a labour hire company placed with the police organisation. | |
| **Police Officer** | The model WHS Act and the *Health and Safety at Work Act 2015* (New Zealand) explicitly states that a police officer[2] is defined as a worker, and further states that a police officer is at work when the officer is on duty or lawfully performing the functions of a police officer, but not otherwise. | |
| **Other persons at the workplace** | Other persons in the workplace refers to any person in a workplace, including visitors to police premises and casual volunteers.<br><br>They must take reasonable care of their own health and safety and that of others who may be affected by their actions or omissions. They must also comply, so far as they are reasonably able, with any reasonable instruction that is given by the PCBU to comply with WHS laws. The public also must comply with any lawful direction issued by police officers under relevant legislation during their policing duties. | |

Footnotes

[2] Please note, that although the *Health and Safety at Work Act 2015* (New Zealand) uses the term 'constable', for the purposes of this Guide, the terms 'police officer' and 'constable' hold the same meaning.

# Recognising the challenges for police

**Police have a unique role in the community and need to balance the demands of their role against the broader legal framework in which they operate, including adhering to the police oath of office and the relevant criminal code in each individual jurisdiction.**

The application of the relevant work health and safety legislation may create complex challenges and conflicts for operational police because:

| | |
|---|---|
| 01. | Police have statutory obligation(s) to protect people and property and may need to respond to situations that are dynamic, rapidly changing, time-critical, and which may potentially expose them to risks. |
| 02. | Police often manage high risk incidents in largely unpredictable environments to save lives, such as responding to an active armed offender. In these unique situations, police are required to balance the complex demands of both their sworn oath and relevant WHS obligations. |
| 03. | Police 'workplaces' are anywhere police go to fulfil their policing duties. These may be unfamiliar settings, widely divergent in layout, and may place police at direct or indirect risk of harm. For example, policing protests during a global pandemic. |
| 04. | Police require training that will equip them to make complex decisions in a range of scenarios, and in carrying out this work they may at time possess incomplete or inaccurate information about a particular situation. Police organisations deploy suitably trained officers to situations; however, there will be times when they encounter circumstances outside their training and experience. For example, when responding to water-based emergencies or disaster victim identification. |
| 05. | Policing is an evolving profession which is required to flexibly respond to complex social issues as they arise and to manage a large and diverse scope of work such as family violence prevention activities, responding to terrorism threats and civil unrest. These emerging issues may present new and complex WHS risks to operational police. |
| 06. | Police may undertake operational duties outside of their own jurisdiction, which may create different challenges. For example, police participating in United Nations peacekeeping missions, capacity development programs or emergency responses in foreign countries may be working in an environment with different work health and safety standards to those provided under Australian and New Zealand law. |
| 07. | Police may frequently be exposed to traumatic events and the cumulative impact of this operational exposure over time can present a risk of psychological injury, including depression, anxiety, and post-traumatic stress disorder (PTSD). |

# Health and safety duties in operational policing

## Who are the duty holders?

The term duty holder in this Guide is used to refer to any person who has a work health and safety duty.

Under work health and safety legislation, the duty holders are:

- Persons conducting a business or undertaking (PCBU).
- Officers.
- Workers.
- Other persons at the workplace.

The definition of each of the duty holders is outlined in the 'Key Terms' section of the Guide.

The standard of care required of these duty holders differs depending on their role in relation to work activities and the extent to which the duty holder can direct, control or influences the activities. Those with the most control or influence will have the most significant duties.

For information on where more than one person has the same duty for a matter see section 'Can more than one person hold the same duty?'

### Who is an 'officer' under the legislation?

- In Australia, an 'officer' is defined as per the definition of 'officer' in section 9 of the *Commonwealth Corporations Act 2001* (the Corporations Act). It also includes officers of a business or undertaking of the Crown (the Commonwealth, a state or territory) and officers of a public authority.
- In New Zealand, an 'officer' is defined in section 18 of the *Health and Safety at Work Act 2015*.
- Generally, an officer is a person who makes or participates in making decisions that affect the whole or a substantial part of an organisation.

## What are the duties?

### Primary duty of care

The PCBU has the primary duty of care, under the relevant work health and safety legislation. This requires the police PCBU to ensure, so far as is reasonably practicable:

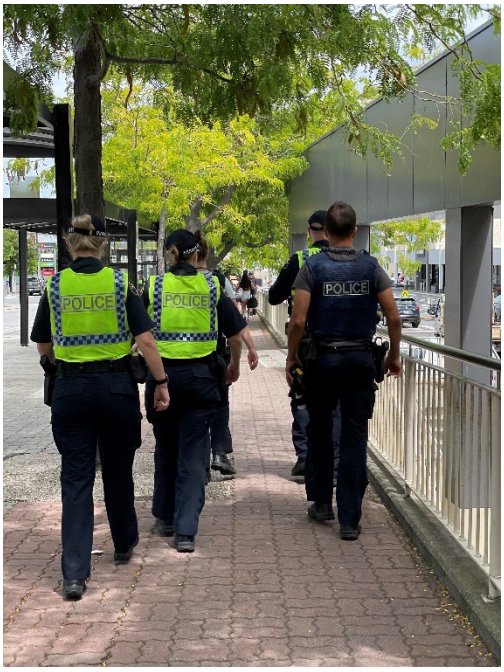
- the health and safety of workers, either directly employed, or influenced or directed by the Commissioner/police organisation in their work activities, while they are carrying out police work
- that other people's health and safety is not put at risk from work carried out as part of the undertaking of policing.

The primary duty of care includes specific duties which have been outlined below with examples relevant to a police PCBU. Generally, the applicable work health safety legislation requires the PCBU to ensure, so far as is reasonably practicable, all of the following:

- The provision and maintenance of a working environment that is safe and without risks to health - *for example, ensuring that there is safe access to, and exit from, police facilities*.

- The provision and maintenance of safe plant and structures that do not pose health risks - *for example, ensuring that police vehicles and police facilities are designed, constructed, and maintained to be safe for their intended and likely use during work.*
- The provision and maintenance of safe systems of work - *for example, establishing arrangements that allow police officers adequate rest periods.*
- The safe use, handling, storage, and transport of plant, structure, and substances - *for example, ensuring that there is safe use, handling, transport and storage of police weapons and safe handling, storage, and transport of confiscated drugs.*
- The provision of adequate facilities for the welfare of workers at work - *for example, ensuring that workers have access to washrooms, lockers and dining areas that are fit for use as well as appropriate shelter when working outside of police facilities or vehicles.*
- The provision of any information, instruction, training, or supervision necessary to protect workers and others from risks to their health and safety arising from the conduct of the business or undertaking - *for example, providing police officers instruction and training on how to safely apprehend offenders threatening people with firearms, or providing intelligence on increased supply of illegal handguns in an area they will be working in.*
- That the health of workers and the conditions of the workplace are managed to prevent injury or illness arising out of the conduct of the undertaking - *for example, developing material and/or providing training that provides guidance on wellbeing and the prevention and treatment of psychological injury.*[3]

In some circumstances, a worker is required to live at accommodation that is owned by, or under the management or control of the police PCBU, for the




purposes of the worker's engagement or because other accommodation is not reasonably available. In that case, the police PCBU must, so far as is reasonably practicable, maintain the premises so that the worker occupying them is not exposed to risks to their health and safety. For example, what is reasonably practicable in relation to accommodation for workers stationed overseas may differ from domestic standards.

PCBUs will have additional duties in relation to any buildings or workplaces they own or manage. For example, a PCBU must ensure that the means of exiting and entering the workplace, and anything arising from the workplace, are without risks to anyone's health and safety.

A police officer or other person being exposed to a risk arising from the undertaking of policing is not in itself a breach of the primary duty of care. A breach occurs when the police PCBU fails to do what is 'reasonably practicable' in the relevant circumstances to eliminate, or if that is not reasonably practicable, minimise the risks. The mobile, wide ranging and at times unpredictable nature of operational police work will have implications for what is reasonably practicable in complying with these duties.

This means the extent to which the police PCBU can ensure health and safety will depend not only

Footnotes

[3] The topic of psychological health, wellbeing and safety is covered comprehensively in the *Strategic framework for the management of mental health in the policing workforce: A principles-based approach* (2016).

on whether they have put in place safe systems of work and have adequately educated, trained, prepared, and equipped police officers to undertake work safely, but on the extent to which the workplace is under their influence and control.

Even in these circumstances the police PCBU must still comply with its duty to ensure the health and safety of its workers but what is reasonably practicable will be different from where your workers were working in a workplace that you have control over. Even though anywhere that police go to undertake police work becomes their workplace, the places they go are often workplaces where other PCBUs also have the same primary duty of care. In these circumstances, the police PCBU should work with other PCBUs to meet the duty. See section 'Can more than one person hold the same duty?'

## What does 'Reasonably Practicable' mean?

**Section 18 of the model WHS Act defines 'reasonably practicable' as what is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety.**

### 'Reasonably practicable' is an objective test

The test of what is 'reasonably practicable' is an objective test. That means, a person is to be judged by the standard of behaviour expected of a reasonable person in the duty holder's position who is required to comply with the same duty. Police have a duty to respond to situations that may involve hazards and risks, often caused by the actions of others in situations where they cannot control all aspects of the physical environment. What is reasonably practicable in undertaking operational policing may not be the same as what is reasonably practicable in undertaking work in a more static and predictable environment.

## Industrial manslaughter offences

There have been recent reforms which introduce specific industrial/workplace manslaughter offences under the applicable WHS Acts.

At the time of review, manslaughter laws have been introduced in the Australian Capital Territory, Northern Territory, Queensland, and Victoria. In Western Australia, the Work Health and Safety Bill 2011 is awaiting Royal Assent, with the new legislation including industrial manslaughter as an offence. South Australia is also currently progressing the Work Health and Safety (Industrial Manslaughter) Amendment Bill 2019.

Although New Zealand has not introduced specific industrial/workplace manslaughter offences, section 47 of the *HWSA Act* outlines the 'offence of reckless conduct in respect of duty' and the prescribed penalties.

Broadly, industrial manslaughter offences apply to negligent conduct by a duty holder or officer which breaches certain duties and causes the death of a person who was owed the duty.

Generally, these changes do not create additional duties, but rather introduce greater penalties on already existing duties under WHS legislation.

Officers can be charged with industrial manslaughter offences, but employees and volunteers do not meet the threshold for liability.

# What must be taken into account and weighed up?

**To identify what is or was reasonably practicable, the applicable WHS laws set out a list of factors that must be taken into account and weighed up to achieve the highest level of protection that is both possible and reasonable in the circumstances. This list is not exhaustive and other factors may also be considered.**

## Likelihood of the hazard or risk concerned occurring

When determining what is reasonably practicable, consideration should be given to the likelihood of the hazard or risk eventuating.

If harm is more likely to occur, then it may be reasonable to expect more should be done to eliminate or minimise the risk.

A process of risk assessment can assist with deciding how likely it is that a hazard or risk will occur before and during operational policing situations. For police, this is often a dynamic process. More detail is provided in the section 'Assessing Risks'.

## Degree of harm that might result from the hazard or risk

The greater the degree of harm that could result from a hazard or risk, the greater the significance that should be given to it when weighing up all the matters relevant to determining what is reasonably practicable in the circumstances.

Police may enter situations where a threat is initially assessed as having a low risk because of insufficient or inaccurate intelligence. If new intelligence indicates that the threat to health and safety may be higher than anticipated, the adequacy of the associated risk control measures should be reassessed.

A police PCBU should provide training to assist police officers to deal with dynamic situations.

## What the person knows, or ought to reasonably know about the hazard or risk and ways to eliminate or minimise the risk

The determination of what a PCBU should know is based on what the PCBU knows about a hazard or ways to eliminate or minimise a risk and what a reasonable person in the PCBU's position would be reasonably expected to know.

This means that at an organisational planning level, police PCBUs should look at all available information about policing and the hazards and risks that can occur in a range of situations, then develop a safe system of work, including training and education systems, standard operating procedures, and policies, and prepare and equip its officers to undertake their duties as safely as reasonably practicable. Information may be obtained by several means including but not limited to:

- consulting workers, subject matter experts, work health and safety regulators and other relevant work health and safety personnel

- doing risk assessments of operational policing scenarios
- reviewing results of compliance audits, validation tests on operational procedures and equipment, data on incidents, injuries, and safety investigations
- considering the outcomes of training and training evaluations and/or accreditations
- learning from previous operational activities and incidents in the organisation and from other comparable organisations
- reading relevant Regulations, Codes of Practice, and research on injury and death prevention in policing.

Police PCBUs understand that although a police officer may not know the full details of a particular situation until they arrive, it is expected they would maintain an awareness of what they would do if they were faced with the types of hazards or risks that could occur in similar situations.

### Availability and suitability of ways to eliminate or minimise the risk

The police PCBU must regularly scan the international policing sector, including services to the sector, to detect risk control measures. The availability of emerging controls must then be assessed for their suitability for the work that police are performing in their operational context.

#### Broader Legal Framework

Police also need to balance the demands of their role against the broader legal framework in which they operate, for example:

- the police oath of office as it is sworn in each jurisdiction
- the relevant criminal code or law in each jurisdiction
- human rights obligations - international conventions that Australia is a signatory to or individual human rights charters within local jurisdictions.

Equipment to eliminate or minimise a hazard or risk is regarded as being available if it is provided on the open market, or if it is possible to manufacture it.

A work process (or change to a work process) to eliminate or minimise a hazard or risk is regarded as being available if it is feasible to implement.

In determining whether a risk control measure is suitable, the police PCBU should consider, among other relevant factors, if it will:

- be effective in eliminating or minimising the possibility of harm from a hazard or risk or the degree of that harm
- not introduce new and higher risks in the circumstances
- be practical to implement in the circumstances.

For the police PCBU, this means considering the above in relation to operational activities undertaken by police.

At times, there may be no available or suitable ways to eliminate a hazard or risk. The police PCBU must then minimise the risk, so far as is reasonably practicable, in accordance with the hierarchy of control measures as outlined in the Controlling risks section within this Guide.

### Costs associated with available ways of eliminating or minimising the risk

All risks can be controlled, and it is always possible to take action, such as providing instructions to those who may be exposed to the hazard. There will normally be several different options between these two extremes. The cost of controlling a risk may be considered in determining what is reasonably practicable but cannot be used as a reason for not taking any action.

In determining whether a particular level of expenditure is reasonable in the circumstances, a police PCBU should consider the likelihood and degree of harm of a hazard or risk, and the reduction of the likelihood and/or degree of harm that will result if the control measure is implemented.

Where the hazard or risk has the potential to cause death, serious injury or illness, stronger emphasis

should be given to those controls that eliminate or reduce the level of harm, than those that reduce the likelihood of harm occurring.

Cost cannot be used as a reason for adopting controls that rely exclusively on changing people's behaviour or actions when there are more effective controls available that can change the risk through substitution, engineering, or isolation.

A police PCBU may choose the least costly risk control measures, if the measures will achieve the same reduction in the risk's likelihood and degree of harm as more costly risk control measures. Choosing a low-cost option that provides less protection simply because it is cheaper is not a reasonably practicable means of eliminating or minimising a risk.

# Officer's duty to exercise 'due diligence'

**Work health and safety legislation places a duty on 'officers' to exercise due diligence to ensure that the PCBU complies with its duties under law.**

An officer's role includes establishing and maintaining overarching systems and procedures based on sound, up-to-date knowledge from both internal and external sources. If the police PCBU fails to comply with the primary duties of the applicable work health and safety legislation, this does not automatically mean an officer has also failed to comply. There is no 'attributed liability'. Conversely, an officer can be found to have failed to exercise due diligence even if the police PCBU has not breached the primary duty of care under the legislation.

## What is 'due diligence'?

Due diligence is a proactive duty, which means that an officer must take reasonable steps to:

- acquire and keep up-to-date knowledge of health and safety matters – for example, looking at published research, or commissioning research into hazards and risks that affect police, analysing injury and incident data, comparing approaches with other jurisdictions or other emergency service agencies and, environmental scanning
- gain an understanding of the nature of police operations and generally of the hazards and risks associated with those operations – for example, looking at information and experience from past police operations, undertaking surveys of police officers, comparing experiences with other jurisdictions or with other emergency services agencies, undertaking pilot programs to evaluate different approaches to identified problems
- ensure appropriate resources and processes are available, and used, to enable hazards associated with police work to be identified and risks associated with those hazards to be eliminated or minimised – for example, establish standard operating procedures or other policies and procedures, ensure that education and training are adequate, and ensure that necessary equipment is provided to enable operational duties to be carried out safely
- ensure that appropriate processes are in place for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information – for example, providing a way for police officers to pass on information about incidents, hazards, and risks easily and ensuring that action is taken in response
- ensure that the organisation has and implements processes for complying with any duty or obligation of the organisation under the model WHS Act – for example, establishing systems for consultation with workers, ensuring that consideration of the requirements of the model WHS Act is included when developing policies and procedures, or education and training.

Safe Work Australia has produced guidance on the officer duty and due diligence, which can be found in the Interpretive Guideline model Work Health and Safety Act - the health and safety duty of an officer under section 27 available at https://www.safeworkaustralia.gov.au/resources-and-publications/guidance-materials/health-and-safety-duty-officer

Work Safe New Zealand also provides guidance on what is expected of officers of an organisation when carrying out due diligence. This can be found under the Operational policy framework – WorkSafe positions – Officers' due diligence available at https://www.worksafe.govt.nz/laws-and-regulations/operational-policy-framework/worksafe-positions/officers-due-diligence/.

# Workers and other persons' duty to take 'reasonable care'

### Workers' duty

Under the legislation, a worker has a duty, while at work, to:

- take reasonable care for their own health and safety
- take reasonable care that their acts or omissions do not adversely affect other people's health and safety
- comply, so far as they are reasonably able, with any reasonable instruction, with the WHS Act given by the police PCBU
- follow any reasonable policy or procedure relating to work health and safety that the PCBU has notified to workers.

The primary duty of care rests with the police PCBU to provide a safe workplace and to ensure that police work does not cause risks to the health and safety of police or others. Although individual police officers have a high standard placed upon them in relation to how they undertake their policing duties (particularly when they have sworn an oath of office), their own legal duty to take reasonable care in relation to work health and safety is not the same standard as that placed on the police PCBU or officer.

This means that the duty placed on individual police to take reasonable care for their own and other's health and safety applies within the context of the police PCBU providing them with appropriate standard operating procedures, education and training, instruction and supervision, equipment, and other resources necessary to undertake police duties safely. What constitutes taking 'reasonable care' in an operational role will depend on the individual circumstances; it may include, but is not limited to:

- applying the competencies gained through relevant education and training, such as exercising sound situational awareness and decision-making skills and being resourceful, ethical, and responsible
- following operational orders and working within standard operating procedures and policies
- maintaining regular and effective communication with command, colleagues and members of the public using the systems provided
- undertaking risk assessments when planning operations and as a situation progresses to undertake timely and appropriate responses to health and safety risks to themselves and others in police workplaces
- seeking information and making informed decisions before acting.

### Example - Taking Reasonable Care

Detectives attend a property to execute a search warrant for child pornography. Upon arrival, the police officers find a person with a firearm, threatening to harm police and members of the public. The police officers assess the threat level and attempt to resolve the situation, maintain communication and request back up assistance.

The level of threat suddenly becomes serious and imminent, and the police officers believe it is necessary to physically intervene to protect their own and other's lives. The police officers have taken steps outlined above and then act in accordance with their education and training, appropriate to the situation.

### Example - Failing to Take Reasonable Care

A police officer is issued with a firearm and given clear instructions and training in relation to how to store and handle the firearm when it is not in use. The police officer disregards these instructions and unloads the firearm in an open plan office risking injury to the officer and other colleagues within the vicinity.

### Other persons' duty

Under WHS legislation, all people at workplaces must:

- take reasonable care for their own health and safety
- take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons
- comply, so far as the person is reasonably able, with any reasonable instruction that is given by the PCBU to allow the PCBU to comply with this law.

This means that even if a person is not a PCBU, an officer or a worker they must comply with the work health and safety duties as far as they are reasonably able to do so, e.g., these duties would need to be complied with by any member of the public who is at a police station or at the scene of a crime.

## Can more than one person hold the same duty?

More than one person can have a duty for the same matter and in these circumstances each person retains responsibility for their duty and must discharge their duty to the extent to which the person has the capacity to influence and control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

A duty holder cannot contractually assign responsibility for work health and safety to a third party to avoid an obligation under the model WHS Act. A contract does not release the duty holder from the responsibility of discharging their duty but may acknowledge a shared duty.

The police PCBU is not expected to control all hazards and risks caused by other businesses or undertakings. However, they must, so far as reasonably practicable, consult with others, anticipate the kinds of hazards and risks that could occur within different environments and prepare police as much as possible to deal with those hazards and risks if they arise.

If more than one person has a duty in relation to the same matter under the WHS Act each person with the duty must, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with all other persons who have that duty.

### Managing risks faced by overseas workers

Notwithstanding the exemptions for the Australian Federal Police (AFP) under section 12e of the *Work Health and Safety Act 2011* (Cwlth), the duties of the AFP PCBU and an Officer's due diligence obligations in respect to managing workers overseas are identical to those in Australia.

Due to the nature of AFP overseas operations and missions, the AFP PCBU will often operate alongside other Australian government agencies, e.g., DFAT, ADF, AusAID etc. It should be noted that a 'workplace' is defined under section 8 of the *WHS Act* to be a place where work is carried out for a PCBU and includes any place where a worker goes, or is likely to be, while at work. A workplace can therefore include a place of residence.

Under section 16 of the *WHS Act*, more than one person can have a duty in relation to the same matter. This duty must be discharged to the extent to which a person has the capacity to influence and control the matter. The AFP PCBU must consider, take reasonably practicable steps, and document those steps to address the health and safety risks of managing overseas operations and missions.

Where appropriate, the AFP PCBU and other Australian government PCBUs should collaborate with and share information relevant to health and safety risks of joint operations and missions.

# The risk management process in the policing context

**Risk management is a systematic approach to eliminating or minimising risks in workplaces. It requires duty holders to consider what could go wrong in policing at work, what the consequences could be. The applicable work health and safety legislation requires that the persons in control of police organisations do whatever is reasonably practicable to eliminate or minimise health and safety risks arising from operational policing.**

The risk management process will assist a police PCBU to do whatever is 'reasonably practicable' to eliminate or minimise health and safety risks from the business or undertaking. The information obtained through the risk management process will also assist officers to exercise due diligence to ensure the police PCBU is meeting its duty.

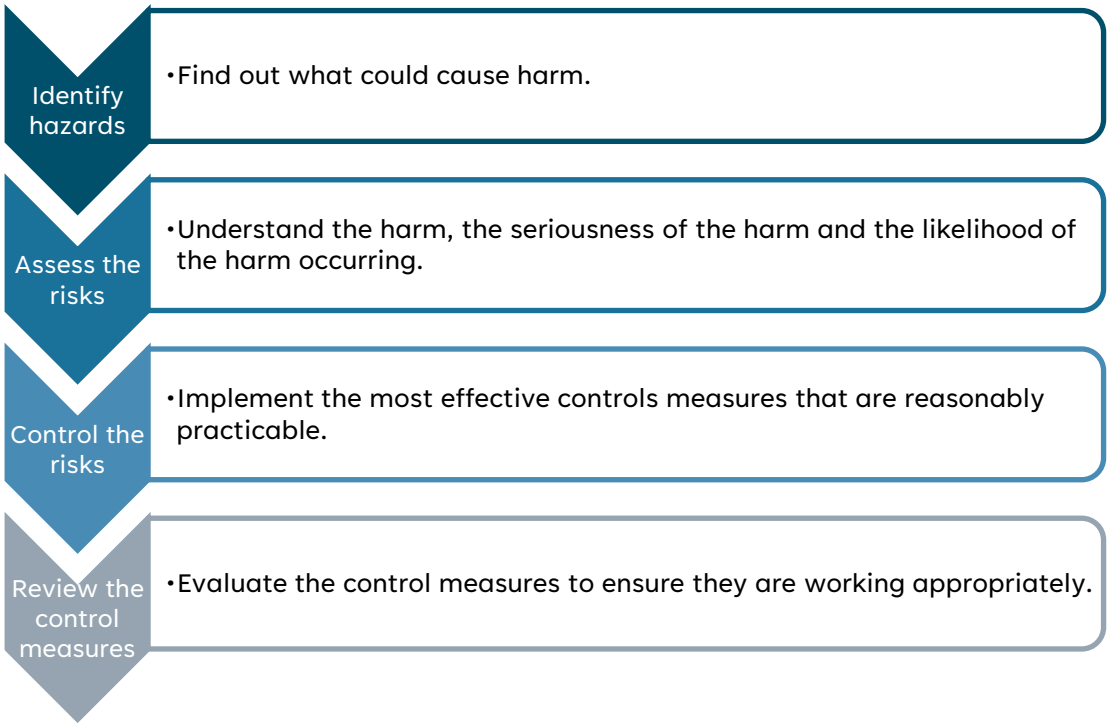
Risk management processes will assist police organisations to respond to change and to build safety into standard operating procedures, systems of work, and police education and training.

The risk management process comprises four steps (see Figure 1).

Given the nature of policing work, the risk management process is undertaken at strategic, operational, and dynamic levels. These levels are explained in further detail below.

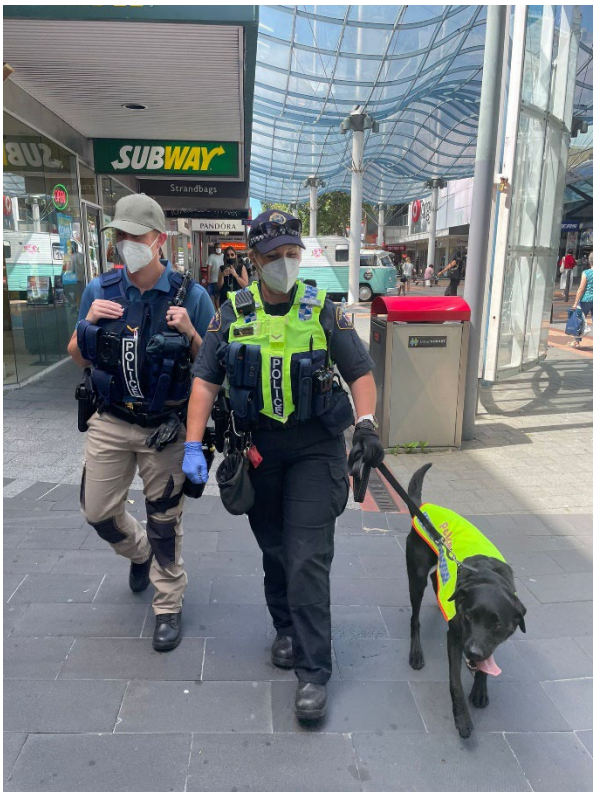
Appendix B includes a family harm case study outlining the risk management process across the strategic, operational, and dynamic levels.

**Figure 1. The risk management process**



# Strategic risk management

Strategic risk management is undertaken by police organisations to manage work health and safety risks that may impact workers, including police officers and other people affected by the conduct of police organisations. It involves consideration of how police officers are prepared through training and the provision of equipment to address situations likely to occur as part of their duties. This process is the responsibility of the PCBU and a key step to fulfilling the primary duty of care.




# Operational risk management

Operational risk management builds on the strategic risk management process to determine the suitable application of resources, training, and equipment to specific operations. This may be undertaken during operational planning, by supervisors, managers, or more experienced police officers, where additional information is available.

## Strategic risk assessment: Police pursuits

There are several risk factors that should be considered when undertaking a strategic risk assessment of police pursuits (known as 'fleeing driver events' in New Zealand), such as:

- the ranks and number of police officers involved in the pursuit
- the condition and standard of police vehicles
- the type and extent of training provided to police about managing such situations
- the effectiveness of the procedure dealing with pursuits
- the circumstances in which pursuits are possible or likely.

## Operational risk assessment: Policing protests

There are several risk factors that should be considered when undertaking an operational risk assessment of protests, such as:

- When and where is the protest taking place?
- Will the protest disrupt normal activities/impede access to buildings etc?
- Are there any members of the public in the immediate area?
- Is there a pandemic such as COVID-19, or other biological risk factors to consider?
- Potential harms
  - officers could be hurt/injured by protestors
  - protest could become out-of-control
  - officers could contract air borne virus if policing during a global pandemic
- Police officers:
  - the number of officers in attendance
  - what level of training/experience do officers have?

# Dynamic risk management

A dynamic risk assessment is not a formal documented process; it is about being able to articulate the thought processes of the likelihood and consequences of a proposed course of action.

Dynamic risk management is the continuous cognitive (thinking) process of identifying hazards, assessing risk, taking action to eliminate or reduce risk, monitoring and reviewing, in the rapidly changing circumstances within an operational incident relying on their situational awareness.

A dynamic risk assessment is not a formal documented process; it is about being able to articulate the thought processes of the likelihood and consequences of a proposed course of action.

It is often undertaken by police officers according to established procedures (not necessarily through formal reporting). Police officers are trained in dynamic risk management as part of their basic training which is reinforced throughout their careers as part of their overall training.

## Dynamic risk assessment: Roadside stop

To assess the risks of a roadside stop that has the potential to escalate into a more serious event, the following risk factors that should be considered include:

- behaviour of the driver (e.g., do they appear agitated or were they driving dangerously?)
- traffic conditions (e.g., are the roads busy/is there traffic congestion)?
- driver characteristics:
  - is the driver known to police?
  - is there any intelligence on the driver about past behaviour (e.g., is the driver known to behave aggressively when interacting with police)?
  - is the driver known to carry any weapons?
- police officers:
  - what experience do officers have in conducting roadside stops?
  - how experienced is the officer conducting police pursuits should the driver fail to stop or flee the incident?

01.

# Step one: Identify hazards

A hazard is any situation, object or environment that may cause harm or injury. Hazards generally arise from the following aspects of work and their interaction:

- the physical work environment
- the equipment, materials and substances used
- work design and management
- the work tasks and how they are performed.

The first stage of risk management is identifying hazards in relation to the tasks that police are required to undertake (see Table 1 for examples). Methods of identifying hazards in policing include, but are not limited to:

- Finding information from the workplace – completing a hazard checklist, consulting with workers and HSRs, using experience gained through review of similar operations, conducting surveys of police officers, analysing, and reviewing work processes.
- Finding and applying available information – looking at published information from a variety of sources, seeking advice from specialists, reviewing information on equipment from designers and manufacturers.
- Testing and measuring – some hazards, such as noise and atmospheric contaminants, require measurement to decide if action is required.
- Analysing records and data – looking at accident and injury data and the results of any investigations to identify any trends.

**Table 1. Common Workplace Hazards in Policing**

| | Hazard | Potential harm |
|---|---|---|
| | **Mechanical hazards** | Being hit by moving vehicles or being caught by moving parts of machinery can cause fractures, bruises, lacerations, dislocations, permanent injuries, or death – *for example, use of firearms, radios, working near traffic or using a police vehicle.* |
| | **Exposure to hazardous chemicals and other substances** | Chemicals (such as acids, hydrocarbons, heavy metals) and dusts (such as asbestos and silica) can cause respiratory illnesses, cancers, or dermatitis – *for example, OC spray, chemicals used in illicit drug manufacture, exposure to lead during firearms training or chemical spills.* |
| | **Biological** | Micro-organisms that have the potential to cause infectious disease such as hepatitis, legionnaire's disease, Q fever, HIV/AIDS, or COVID-19 – *for example, contracting infectious diseases from contact with saliva or blood.* |
| | **Sources of energy** | Sources of energy can have the potential to cause harm, including electricity, extreme temperatures (causing in heat stroke, hypothermia, or frost bite), high-powered light and damaging radioactive sources – *for example, conducting a search for a missing bushwalker or managing crowd control at sporting events.* |
| | **Manual tasks** | Overexertion or repetitive movement can cause muscular strain – *for example, from carrying equipment, apprehending an offender who is resisting arrest, dealing with public disturbances, participating in regular operational safety and tactics training (OSTT) that includes 'hands-on' application of arrest/take down techniques and other physical activities.* |
| | **Gravity** | Falling objects, falls, slips and trips of people can cause fractures, bruises, lacerations, dislocations, concussion, permanent injuries, or death – *for example, conducting ceiling cavity searches and moving around in unfamiliar conditions, where fall hazards may not be immediately apparent.* |
| | **Noise** | Exposure to loud noise have the potential to cause hearing damage – *for example, firearm training, crowd control at music festivals.* |
| | **Psychosocial hazards** | Effects of fatigue, stress, bullying and exposure to violence can cause psychological and physiological harm – *for example, attending a suicide or death of a young child, being physically assaulted while apprehending an offender or poor work organisation resulting in work overload.* |
| | **Physical working environment** | Unpredictable and rapidly changing work locations and environments including remote and isolated location, heights, and unrestrained animals, which can put officers at risk of harm – *for example, conducting a search of a property where there is an aggressive dog.* |
| | **Occupational violence** | Interactions with members of the public that can rapidly become volatile and potentially result in physical and psychological harm – *for example, controlling large protests or responding to a report of aggression.* |

# 02. Step two: Assess the risks

A risk is the possibility that harm (death, injury, or illness) might occur. A risk assessment involves considering what could happen should someone be exposed to a hazard (consequence) and the likelihood of it happening. A risk assessment can help determine:

- the severity of the risk
- whether existing control measures are effective
- what action should be taken to control the risk
- how urgently the action needs to be taken.

Risk assessment does not always have to be a long, complex process. It is a means to an end, not an end in itself. It should be straightforward, purposeful, and actionable. All the factors that affect the risk should be examined including:

- the number of people exposed to the risk
- the different types of people who are exposed *e.g., inexperienced workers, pregnant workers, members of the public*
- how they are exposed to the risk
- how often they are exposed *e.g., daily, or infrequently*
- how long they are exposed for *e.g., throughout a whole shift*
- the combination of hazards they are exposed to e.g., psychosocial risk and traffic hazards in attending accident scenes
- how serious the harm could be e.g., a fatality, a chronic injury, or first aid only
- what the law says about risk control e.g., some risks have mandatory risk control measures
- how well current control measures work.

Assessing risks helps to ensure that the most serious problems are addressed first. Codes of Practice have advice about how to assess the risks of different hazards, e.g., the Hazardous Manual Tasks Code of Practice includes a risk assessment checklist.

### When should risks be assessed?

A risk assessment is mandatory under the WHS Regulations for high-risk activities such as entry into confined spaces, diving work and live electrical work. In other instances, risk assessments should be undertaken whenever:

- there is uncertainty about how a hazard may result in injury or illness
- the work activity involves several different hazards and there is a lack of understanding about how the hazards may interact with each other to produce new or greater risks
- changes at the workplace occur that may impact on the effectiveness of control measures.

A risk assessment may not be necessary if a risk is well known, and the solution is obvious. Given the nature of policing work, risk assessments will often be necessary. Three levels of risk assessment should be considered, strategic, operational, and dynamic.

### Risk assessment methods

An analysis and evaluation that considers the consequence and likelihood of any risk should include:

- working through a sequence of events to determine where things could go wrong and how this could result in harm
- evaluating the way operations are planned, organised, resourced, and performed
- the adequacy of education and training or knowledge required to perform duties
- considering the types of equipment to be used and risks involved
- using information systems and technology to predict risk to police, where such systems are available
- conducting debriefings of operations, post-operation assessments, workshops and desktop and field exercises
- considering different situations or conditions that could alter the risks or risk levels, such as changes to operations.

# 03. Step three: Control the risks

The most important step in managing risks involves eliminating, or if that is not possible, minimising the risks so far as is reasonably practicable.

The various ways of controlling risks are ranked in a hierarchy from the highest level of protection and reliability to the lowest as shown in Figure 2: Hierarchy of risk control measures. Duty holders are required to work through this hierarchy when managing specific risks identified in legislation (e.g., *remote, or isolated work*).

**Level 1**

These control measures are the most effective. They involve eliminating the hazard and associated risk. The best way to do this is by not introducing the hazard into the workplace. Risk can also be eliminated by removing the hazard completely – for example, by removing trip hazards on the floor or disposing of unwanted chemicals.

**Level 2**

If it is not reasonably practicable to eliminate the hazards and associated risks, the risks must be minimised using a Level 2 control measure. These attempt to address the hazard and associated risks by:

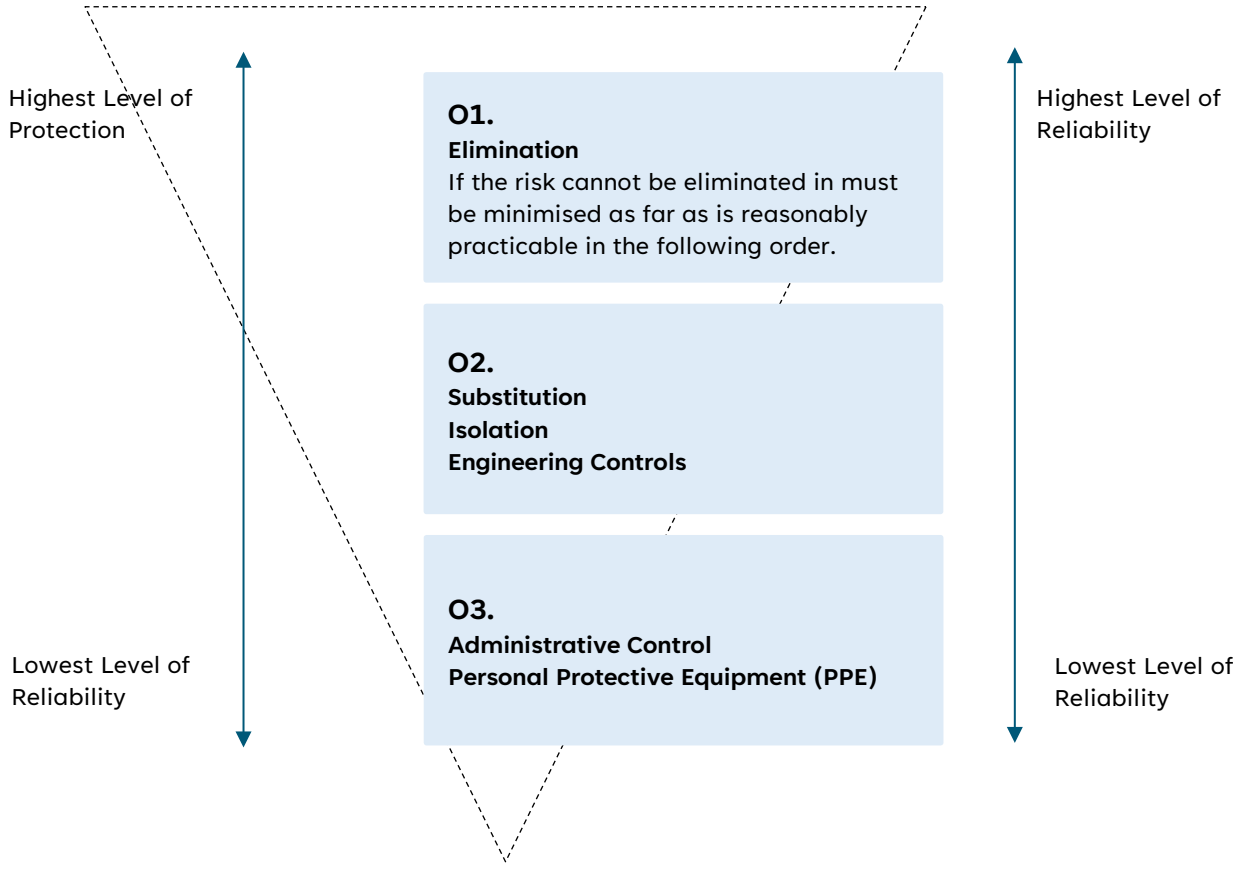
- substitution: replacing the hazard or hazardous work practice with something that gives rise to a lesser risk *e.g., using load bearing vests to redistribute the weight of equipment to reduce the risk of back injury*.
- insolation: separating the hazard from people *e.g., containing a hazardous site using cordons or barriers*.
- engineering control: use of mechanical or electrical devices or modification of equipment *e.g., building safety features into vehicles*.

**Level 3**

These control measures include the use of personal protective equipment and administrative controls such as training. They do not control the hazard at the source. They rely on human behaviour and supervision, and used on their own, tend to be least effective in minimising risks. For this reason, Level 3 control measures should only be used:

- when there are no other practical control measures available (as a last resort)
- as an interim measure until a more effective way of controlling the risk can be used
- to supplement higher level control measures (as a back-up).

**Figure 2. Hierarchy of risk control levels**



# 04. Step four: Review the control measures

**Deciding on and implementing a risk control measure is not the end of the risk management process. It is important to constantly monitor and review control measures to ensure they continue to prevent or control exposure to hazards or hazardous work practices.**

To ensure a control measure remains effective it should be properly maintained by checking that it is still:

- fit for purpose, *e.g., whether the personal protective equipment issued to police for use during crowd control is affording them adequate protection*
- suitable for the nature and duration of the work, *e.g., whether the quality and frequency of debriefing and other support given to police on covert operations is sufficient*
- functional, *e.g., a duress alarm is installed in an appropriate location and is regularly tested.*

## When should control measures be reviewed?

Regulation 38 of the WHS Regulations requires that when the PCBU is managing risks, they are required to review, and where necessary, revise control measures to maintain, so far as is reasonably practicable, a workplace that is free from risks to health and safety. A review of control measures required under the WHS Regulations must be undertaken in the following circumstances:

- when the measure does not control the risk, it was implemented to control so far as is reasonably practicable
- before a change that is likely to give rise to a new or different risk that the measure may not effectively control
- a new hazard or risk is identified
- the results of consultation with workers and other duty holders indicate that a review is necessary
- a health and safety representative (HSR) requests a review.

For example, the police PCBU should:

- Have a planned program of inspections and maintenance. Due to the wide range of places police attend that become a workplace, police can plan inspections and maintenance within police occupied buildings and of police owned equipment, however they cannot be responsible for inspecting and maintaining other businesses. Police could, however, work with other businesses or undertakings for example, if a large event is planned, police could check to ensure safety evacuation procedures are adequate, liaise with other emergency services or government agencies and work together to ensure a high standard of safety.
- Undertake a review every time the work environment changes, where the changes may impact on health and safety. For police, as the work environment changes constantly, this does not mean a review would be triggered every time an officer was deployed to attend to an incident in a new or different location. However, it would mean ensuring that reviews were undertaken in response to new and emerging issues impacting on how police undertake their duties, for example, changes in patterns of crime, deinstitutionalisation, or new drugs of dependence.

In determining the frequency of the review process, the police PCBU should consider:

- whether control measures for high-risk activities should be reviewed more often
- whether there may be stages in the life of a structure, item of plant or equipment where more frequent reviews are required, for example manufacturer's instructions or technical standards stating how often they must be inspected and serviced

- whether there are specific review requirements under the WHS Regulations, e.g.:
    - Regulation 401 of the Australian WHS model Regulations requires the PCBU to review, and if necessary revised, measures for the control of health risks from exposure to lead at the workplace (e.g., from firing weapons at an indoor firing range)
    - Regulation 213 of the Australian WHS model Regulations requires the PCBU with management or control of plant at a workplace to maintain, inspect and test plant in certain ways.
- Reviews of risk controls should also be built into operational debriefs or internal police debriefs policies.

## Review methods

The same methods as in the initial hazard identification step can be used to review control measures. Police and their HSRs should be consulted as part of the review. The following questions should be considered:

- Are the control measures working effectively in both their design and operation?
- Have the control measures introduced new problems?
- Have all hazards been identified?
- Have new work methods, new equipment or chemicals made the job safer?
- Are safety procedures being followed?

- Has instruction and training provided to police on how to work safely been successful?
- Can training include learnings from previous incidents to inform and improve practice?
- Are police actively involved in identifying hazards and possible control measures? Are they openly raising health and safety concerns and reporting problems promptly?
- Is the frequency and severity of health and safety incidents reducing over time?
- If new legislation or new information becomes available, does it indicate that current controls may no longer be the most effective?

Should challenges be identified, police and their HSRs should undertake the management process, review information, and make further decisions regarding risk control.

# Consultation, representation, and participation

## Consultation, co-operation, and co-ordination with other duty holders

Police often undertake operational duties away from their own police stations and may find themselves at workplaces managed or controlled by other PCBUs, who will also have a primary duty of care. Under the legislation, if more than one person has a duty in relation to the same matter, each person with the duty must, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with all other persons who have that duty.

Talking to, and co-operating and co-ordinating activities with others at the workplace will make the control of risks more effective and help each duty holder comply with their duty. The police PCBU should consult with other PCBUs to deal with predictable circumstances that would involve a police presence and provide input into risk management plans where it is appropriate to do so. Depending on the context, this may include consultation with PCBUs of:

- other organisations that assist during emergencies, such as fire brigades, ambulance services, emergency services, defence forces, and other police organisations
- workplaces where police attendance is planned due to the numbers of people that congregate there or the nature of people's activities there. These may include:
    - operators of hospitals, disability group homes, child and aged care centres, evacuation centres, schools, and universities
    - operators of entertainment venues, such as stadiums, clubs or theatres
    - organisers of entertainment events, such as concerts and festivals
    - operators of retail precincts such as shopping centres
    - administrators of transport infrastructure, such as bus and train stations, airports, seaports, and road traffic network
    - operators of major hazard facilities
    - public and private administrators of farmland, bush, waterways, and airspace
    - administrators of public spaces such as parks
    - regulatory authorities, such as local governments and liquor licensing authorities.

## Consulting workers

Engaging with workers and Health and Safety Representatives (HSRs) is a key part of managing work health and safety risks. Involving workers and HSRs in the risk management process provides insight into how hazards and risks can come about, and about the workability and effectiveness of potential risk controls.

The applicable work health safety legislation requires a PCBU to, so far as is reasonably practicable, consult with workers who are, or are likely to be, directly affected by a matter relating to work health and safety. Consultation must include all the following:

- if workers are represented by a HSR, the consultation must involve that representative
- sharing relevant information with workers/HSRs
- giving workers/HSRs a reasonable opportunity to express their views, and contribute to decision making

- taking into account the views expressed
- advising workers/HSRs of outcomes in a timely manner.

While the police PCBU should aim to reach agreement with workers and HSRs because of consultation, agreement is not a required outcome of the consultation provisions in the model WHS Acts. The police PCBU is still ultimately responsible for making decisions about health and safety, and controlling risk so far as is reasonably practicable.

The legislation also places obligations on the PCBU in relation to the process for electing HSRs and establishing work groups, consulting with and training HSRs and setting up health and safety committees. Additionally, it sets out powers and functions for HSRs.

Safe Work Australia has provided guidance on HSRs and health and safety committees in the *Worker Representation and Participation Guide*, available at:

www.safeworkaustralia.gov.au/doc/worker-representation-and-participation-guide

Work Safe New Zealand has also provided guidance on HSRs and health and safety committees in the *Worker Representation Through Health and Safety Representatives and Health and Safety Committees*, available at:

www.worksafe.govt.nz/assets/dmsassets/zero/878WKS-3-HSWA-worker-health-safety-representation.pdf

### When should consultation occur?

The legislation requires consultation whenever the following activities are undertaken:

- identifying and assessing hazards and risks
- making decisions about controlling risks
- making decisions about the adequacy of welfare facilities for workers
- proposing changes that may affect the health or safety of workers
- making decisions about procedures consulting with workers, resolving health and safety issues, monitoring the health of workers, monitoring workplace conditions, or providing information and training to workers.

### How should consultation occur?

There is no prescribed format for consultation. This means the police PCBU can negotiate with workers to establish consultation mechanisms that are suited to the needs of operational policing. Where HSRs have been elected and/or committees have been formed, consultation can occur through HSRs and/or health and safety committees. Other ways to consult could be to include health and safety as a standing agenda item on any regular scheduled meetings or ensure work health and safety is an item to be covered in any pre-operational briefings.

The establishment of effective consultation processes will enable a shared understanding about how health and safety will be managed during various police operations. When unexpected matters arise during a police operation, there may not be time to consult. However, consultation in the early stages of a planned operation or in the development of standard operating procedures means that workers will already have had input when quick decisions about risk control measures are needed.

Safe Work Australia has produced the model *Code of Practice: Work Health and Safety Consultation and Co-operation and Co-ordination*, available at www.safeworkaustralia.gov.au

Work Safe New Zealand has also produced the guide *Good Practice for Worker Engagement, Participation and Representation*, available at www.worksafe.govt.nz

### Issue resolution

The applicable WHS legislation includes provisions for resolving work health and safety issues that arise in the workplace or from the conduct of a business or undertaking.

An ‘issue’ is any concern about health and safety at the workplace that remains unresolved after consultation with the affected workers and the relevant PCBU has occurred. For example, an issue could include a difference in opinion on whether something is a potential risk to health and safety or whether a particular control measure is adequate. Other issues may involve how workers are

consulted or participate in health and safety decisions.

In many instances, issues will be resolved without using the issue resolution provisions of the model WHS Act/s. This is more likely to be the case if risks are proactively managed and workers are encouraged to discuss any concerns as they arise.

Where informal resolution does not occur, the issue resolution provisions of the model WHS Acts apply. Among other things, they:

- require parties to make reasonable efforts to resolve issues in a timely, effective, and final way, in accordance with an agreed issues resolution procedure, or if there is no agreed procedure, the default procedure set out in the WHS Regulations
- allow representatives of the parties to enter the workplace to attend discussions for resolving the issue
- enable parties to request a work health and safety inspector attend the workplace to assist with resolution of the issue, should the parties not reach a resolution after making reasonable efforts to do so
- enable the work health and safety inspector to use any of their compliance powers provided by the model WHS Act when they attend the workplace due to a party requesting their attendance to assist with issue resolution.

If the issue is resolved, and any party to it requests that the resolution be in writing, the details of the issue and its resolution must be set out in a written agreement and:

- all parties must be satisfied that it accurately reflects the resolution
- the agreement must be provided to all people involved with the issue and, if requested, to the workplace's health and safety committee (HSC), if there is one.

At any stage in the issue resolution process, a worker can still bring the issue or related ones to the attention of their HSR, if their workplace has one. An agreed issue resolution procedure, and any issue resolution, must also be consistent with other requirements in the model WHS Act and model WHS Regulations and all other law.

Agreed resolution procedures and any issue resolution cannot, for instance:

- override the work health and safety duties of the police PCBU or any other duty-holder; or
- take away any of the legal entitlements and rights of police officers or unsworn members either as workers or HSRs.

Safe Work Australia has produced guidance on HSRs, HSCs, and other worker representation and participation in work health and safety matters in the *Representation and Participation Guide*, available at: www.safeworkaustralia.gov.au/doc/worker-representation-and-participation-guide

### What would an agreed issue resolution procedure look like in policing?

The model WHS Acts require parties to make reasonable efforts to resolve issues in a timely, effective, and final way, in accordance with an agreed procedure, or if there is no agreed procedure, the default procedure set out in the model WHS Regulations 22 and 23.

Section 69 of the *HSWA Act* also covers Provisional Improvement Notices which may be issued by an elected health and safety representative when other consultation strategies have failed.

The model WHS Regulations specify what type of information to include in an agreed issue resolution procedure. If agreement cannot be reached on an issue resolution procedure, then the default procedure in the regulations must be used.

The minimum requirements set out for an agreed procedure for issue resolution are that it must:

- be in writing
- include terms requiring that the parties must firstly determine the nature and scope of the issue, the relevant matters to be considered by the parties and specify a process for reporting outcomes to affected workers
- not prohibit disclosure by any party of the outcome to any union or employer organisation that represents the party.

If these minimum requirements are met, the police PCBU can negotiate with workers to develop an agreed procedure that is suitable for the police working environment and considers operational issues. However, an agreed issue resolution procedure must be consistent with other requirements in the model WHS Act – it cannot override the duties placed on the police PCBU or take away any of the rights given to workers or HSRs.

# Right to cease unsafe work

## Worker's right to cease unsafe work

The model WHS Acts gives workers a right to cease or refuse to undertake unsafe work should the worker have a reasonable concern that to undertake the work would expose the worker to a serious risk to their health or safety, emanating from an immediate or imminent exposure to a hazard.

The model WHS Act requires a worker who ceases work for this reason to:

- notify the PCBU that they have ceased work because of the reasonable concern, unless the worker has been directed to cease work by a HSR
- remain available to undertake suitable alternative work.

What constitutes a 'reasonable concern' in relation to immediate and imminent exposure to a hazard will be different depending on the relevant circumstances and on an individual worker's role, education and training, background and level of experience and the level of supervision and support workers are provided in the work they are carrying out.

During police operations, police and command should be able to effectively make decisions on a case-by-case basis about whether new risk control measures are required, e.g., to keep risks at acceptable levels, options such as tactical withdrawals from situations and seeking alternative means of resolving situations that will be less dangerous should be considered as operations progress.

**Example**
Before commencing a shift, a police officer identifies that a vehicle has defective brakes. The police officer has a **reasonable concern** this would cause serious injury and expose them to an immediate and imminent exposure to a hazard and advises their supervisor.

The police officer is told they must drive the vehicle anyway and a replacement cannot be provided. **The police officer would be entitled to refuse to drive the vehicle**.

If a police officer is adequately prepared and supported in the role they are carrying out, they may not feel it is necessary to cease work even if they are faced with a serious risk to their health or safety from immediate and imminent exposure to hazard, if the risk can be controlled and it is considered necessary to accept that risk in order to fulfil their duties and oath of office, particularly if this means protecting a life.

If a police officer has exercised the right to cease unsafe work and has complied with a direction to undertake suitable alternative work, the continuity of their employment should not be affected.

## Health and safety representative's right to direct that unsafe work cease

In addition to a worker's right to cease unsafe work, the model WHS Acts give HSRs the right to direct a worker to cease unsafe work. This provision has not been taken up by all jurisdictions (refer to your jurisdictional WHS Laws for details on any provisions for HSR's ability to direct that unsafe work cease). The HSR may exercise this right if:

- the HSR has completed approved HSR training
- the HSR has a reasonable concern that work would expose a worker or workers to a serious risk to their health and safety, emanating from an immediate or imminent exposure to a hazard
- that worker or workers are in a work group that the HSR represents

- the HSR has consulted with the police PCBU (or a person appointed as a delegate) and has tried to resolve the matter using the issue resolution procedures required by the model WHS Act, and the issue is not resolved, unless the risk is considered so serious, immediate, and imminent that it is not reasonable to consult before giving the direction.

If a worker ceases work under the direction of a HSR, they must remain available to undertake suitable alternative work. In operational policing, there are police activities that present hazards and risks. Police training, equipment, resources, and other controls are used to eliminate/minimise risks as far as reasonably practicable. A direction by a HSR to cease unsafe work because residual risk exists, may cause tension between the obligations of a police officer under the model WHS Laws and their oath of office. Maintaining effective communication with HSRs and workers they represent and undertaking consultation is the best way for the Commissioner/police organisation to ensure there is a clear understanding of the steps that will be taken to ensure the health and safety of police is maintained and avoid the need for HSRs to direct that unsafe work be ceased.

# Appendix A: Further Information

**Table 2: Work Health and Safety Regulators for Police**

| Jurisdiction | Regulator | Website |
|---|---|---|
| Commonwealth | Comcare | www.comcare.gov.au |
| New South Wales | SafeWork NSW | www.safework.nsw.gov.au |
| Northern Territory | NT WorkSafe | www.worksafe.nt.gov.au |
| Queensland | WorkSafe Queensland | www.worksafe.qld.gov.au |
| South Australia | SafeWork SA | www.safework.sa.gov.au |
| Tasmania | WorkSafe Tasmania | www.worksafe.tas.gov.au |
| Victoria | WorkSafe Victoria | www.worksafe.vic.gov.au |
| Western Australia | WorkSafe Western Australia | www.worksafe.wa.gov.au |
| New Zealand | WorkSafe New Zealand | https://www.worksafe.govt.nz |

## Safe Work Australia

Safe Work Australia has the primary responsibility to lead the development of policy to improve work health and safety and workers' compensation arrangements across Australia. It performs its functions in accordance with strategic and operational plans agreed annually by the Select Council on Workplace Relations. Further information on Safe Work Australia can be found at: www.safeworkaustralia.gov.au

## Work Safe New Zealand

Work Safe New Zealand in New Zealand's primary workplace health and safety regulator. It works with businesses, undertakings, and their workers to develop and promote good work health and safety practices. Further information on Work Safe New Zealand can be found at: https://www.worksafe.govt.nz/

# Appendix B: Risk Management in a Policing Context

**Table 3. Applying the risk management process: family harm case study**

| | Strategic | Operational | Dynamic |
|---|---|---|---|
| **Information Available** | Police officers are often called to attend reports of family violence | Police officers are often called to attend reports of family violence.<br>A call for assistance is received. This is not the first-time police have been called to this address. Three children are thought to reside at the home. Alcohol consumption has been an issue in a previous incident. | Police officers are often called to attend reports of family violence.<br>A call for assistance has been received. This is not the first-time police have been called to this address. Three children are thought to reside at the home. Alcohol consumption has been an issue in a previous incident.<br>On arrival at the scene there are several neighbours on the footpath on the front of the premises. There is a large dog in the front lawn of a fenced single-story house. A man and a woman can be seen arguing through the front window. Three small children are standing in the front doorway of the house. |
| **1. Hazard Identification** | A *strategic* identification of hazards faced by the police organisation may include:<br>• providing information systems to capture data to assist in hazard identification<br>• reviewing available information to determine the frequency of family violence incidents attended by the police organisation<br>• considering previous information from investigations into police attendance at family violence incidents<br>• engage with family welfare and support agencies. | Identification of hazards in the *operational* sense may include consideration of:<br>• who is likely to be present at premises and what is known about them<br>• previous history of firearm use and ownership<br>• whether drugs/alcohol are involved or whether there is a known history of drug/alcohol issues<br>• any mental illness<br>• threats to self or others<br>• intervention orders<br>• any children likely to be present<br>• identification of appropriate methods of tactical intervention<br>• previous successful resolution techniques. | *Dynamic* identification of hazards at the scene of the incident may include:<br>• validation of issues previously identified in the operational hazard identification (e.g., there are children at the address)<br>• identification of any factors not known/identified through the strategic and operational hazard identification e.g.<br>• presence of external parties known or unknown to the people involved or police<br>• condition of premises<br>• weather conditions<br>• traffic conditions |

| | | Strategic | Operational | Dynamic |
|---|---|---|---|---|
| | | | | • escalation of any factors previously considered, including but not limited to the emotional state of people involved<br>• identification of appropriate methods of entry<br>• previous successful resolution techniques |
| **2.** | **Risk assessment** | A *strategic* risk assessment may include assessment of:<br>• how often family violence is encountered by police officers<br>• the training undertaken by police<br>• the legislative obligations of the police organisation. | An *operational* risk assessment may include assessment of:<br>• the level of supervision<br>• the level of experience, training, and skills of the involved officers<br>• any previous interaction with the resident and what occurred<br>• any information known that is likely to cause an escalation e.g., alcohol or drug consumption, threats of violence<br>• potential hazards created by tactical options considered. | A *dynamic* risk assessment may include:<br>• situational awareness<br>• specific assessment of new information e.g., the presence of a large dog and the presence of neighbours<br>• validation of the Operational Risk Assessment (if available). |
| **3.** | **Risk control** | Risk controls that may be considered at the *strategic* level include developing organisational policies that consider:<br>• accountability for different actions such as assessments, operational safety<br>• organisational requirements for action (recording and forms to be completed)<br>• key actions to be undertaken based on known hazards<br>• external agencies and support. | Based on the *operational* assessment of knowledge of situation, persons involved and operation safety principles, controls considered may include:<br>• whether backup or extra supervision is required<br>• whether a forward command point to assess situation 'on site' and consider the use of incident management principles should be arranged<br>• whether medical back up is likely to be required<br>• whether specialist assistance is required. | Risk control at the *dynamic* level may involve:<br>• validating the operational risk control measures identified<br>• considering the allocation of specific roles to address any new risks assessed (isolation/containment of neighbours, support of children)<br>• considering additional risk controls specific to the situation e.g., assistance from dog handlers (either police or council rangers) if required<br>• monitoring risk controls while the incident is resolved in case of escalation. |

| | | Strategic | Operational | Dynamic |
|---|---|---|---|---|
| **4.** | **Review of risk control measures** | The review of risk controls at the *strategic* level may include:<br>• collation of feedback from operational level<br>• analysis of likelihood of occurrence of incidents<br>• consideration of further risk controls based on experience and outcomes of incidents e.g., changes in policy and/or training. | The review of risk controls at the *operational* level may include:<br>• debrief of police employees exposed from an operational perspective<br>• consideration of police employee wellbeing<br>• identification of any hazards or associated risks not identified as part of the process and assessment of the likelihood of regular occurrence<br>• consideration of a hazard register to inform future assessments<br>• provision of input to strategic assessments/reviews where required. | The review of risk controls at the *scene of the incident* may include:<br>• debrief of police employees exposed from an operational perspective<br>• consideration of police employee wellbeing<br>• Identification of any hazards or associated risks not identified as part of the process and assessment of the likelihood of regular occurrence<br>• provision of input to operational debrief. |

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**Document Control**

Version No.: 3

Approved by: ANZPAA Board Out of Session 110 10/08/2022

DFAT 05/09/2022

Status: Final

Security: OFFICIAL

**Acknowledgments**

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